

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN SANTA FE COUNTY AND
MARCI A. HAMILTON, ESQ.
FOR LEGAL SERVICES**

THIS AGREEMENT is made and entered into this 3rd day of Dec, 2009, by and between **Santa Fe County**, hereinafter referred to as "the County", and **Marci A. Hamilton, Esq.**, a sole proprietor with a principal place of business located at 36 Timber Knoll Drive, Washington Crossing, PA, 18977, hereinafter referred to as "the Contractor".

WHEREAS, pursuant to NMSA 1978, Section 13-1-125 "small purchase," the County desires to retain Contractor for the provision of the professional services;

WHEREAS, the County requires the services of the Contractor, and the Contractor is willing to provide these services and both parties wish to enter into this Agreement.

NOW THEREFORE, in consideration of the premises and mutual obligations herein, the parties hereto do mutually agree as follows:

1. SCOPE OF WORK

The Contractor shall:

- A. Provide legal counsel to the County on matters related to the Constitution, the Religious Freedom Restoration Act, and/or the Religious Land Use and Institutionalized Persons Act (hereinafter referred to as "RLUIPA"); and
- B. Represent the County on issues related to RLUIPA, before courts of law, state agencies or other governmental entities; and
- C. Assist the County Attorney, if approved by the County's insurance carrier, with any litigation in matters related to RLUIPA and represent the County, if approved by the County's insurance carrier, in appellate matters related to RLUIPA (the County shall strongly recommend Contractor as its counsel of choice to its insurance carrier in the event litigation is brought against the County under RLUIPA); and
- D. As directed by the County Attorney, brief County officials, employees, counsel and consultants on RLUIPA as applied to land use cases brought before the County.

2. ADDITIONAL SERVICES

- A. The parties agree that all tasks set forth in Paragraph 1, "SCOPE OF WORK" of this Agreement, shall be completed in full, to the satisfaction of the County, in accordance with industry standards and the aforementioned statutes, for the amount set forth in Section 3, "COMPENSATION, INVOICING" of this Agreement, and for no other costs, amount fee or expense.
- B. The County may from time to time request changes in the Project's scope of work to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon by and between the County and the Contractor, shall be incorporated in written amendments to this Agreement.

3. COMPENSATION AND INVOICING

- A. In consideration of its obligations under this Agreement the Contractor shall be compensated as follows:

1. The total compensation to be paid under this Agreement shall not exceed \$50,000 inclusive of New Mexico Gross Receipts tax. The County shall pay Contractor an hourly rate of \$700.00 for services performed. The County further will pay for all reasonable travel expenses incurred by the Contractor in relation to work performed under this Agreement.

- B. The Contractor shall submit a written request for payment to the County whenever payment is due under this Agreement. Within fifteen (15) days of the County's receipt of the written request, the County shall issue a written certification of complete or partial acceptance or rejection of the contractual items or services for which payment is sought.

The Contractor acknowledges and agrees that County may not make any payment hereunder unless and until it has issued a written certification accepting the contractual items or services. Within thirty (30) days of the issuance of a written certification accepting the contractual items or services, the County shall tender payment for the accepted items or services. In the event the County fails to tender payment within thirty (30) days of the written certification accepting the items or services, the County shall pay late payment charges of one and one-half percent (1.5%) per month, until the amount due is paid in full.

- C. In the event the Contractor breaches this Agreement, the County may, without penalty, withhold any payments due the Contractor for the purpose of set-off until such time as the County determines the exact amount of damages it suffered as a result of the breach.

4. EFFECTIVE DATE AND TERM

This Agreement shall, upon due execution by all parties, become effective as of the date first written above and shall terminate four years later, unless earlier terminated pursuant to Section 5, TERMINATION, of this Agreement.

5. TERMINATION

- A. Termination of Agreement for Cause. Either party may terminate the Agreement for cause based upon any material breach of this Agreement by the other party, provided the non-breaching party shall give the breaching party written notice specifying the breach and shall afford the breaching party reasonable opportunity to correct the breach. If within seven (7) days after receipt of a written notice the breaching party has not corrected the breach or in the case of breach which cannot be corrected in seven (7) days the breaching party has not begun and proceeded in good faith to correct the breach, the non-breaching party may declare the breaching party in default and terminate the Agreement effective immediately. The non-breaching party shall retain any and all other remedies available to it under the law.
- B. Termination for Convenience of the County. The County may terminate this Agreement at any time by giving at least thirty (30) days notice in writing to the Contractor. Upon receipt of the notice of cancellation, Contractor shall suspend any further work. By such termination, neither party may nullify obligations already incurred for the performance or failure to perform work rendered prior to the date of termination of this Agreement. However, neither party shall have any obligation to perform services or

make payment for services rendered after such date of termination, with the following exception: that any un-cancellable contract made on the County's written authorization, and still existing at the expiration of the agreed upon interval following notice, shall be carried to completion by the agency and paid for by the County unless mutually agreed in writing to the contrary.

6. INDEPENDENT CONTRACTOR

The Contractor and its agents and employees are independent contractors and are not employees or agents of the County. Accordingly, the Contractor and its agents and employees shall not accrue leave, participate in retirement plans, insurance plans, or liability bonding, use County vehicles, or participate in any other benefits afforded to employees of the County. Except as may be expressly authorized elsewhere in this Agreement, the Contractor has no authority to bind, represent, or otherwise act on behalf of the County and agrees not to purport to do so.

7. ASSIGNMENT

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the County.

8. SUBCONTRACTING

The Contractor shall not subcontract or delegate any portion of the services to be performed under this Agreement without prior written approval of the County.

9. RECORDS AND INSPECTIONS

The Contractor shall maintain detailed books, documents, accounting records and other evidence pertaining to services and costs incurred in providing all services identified in Paragraph 1, "SCOPE OF WORK" of this Agreement. The Contractor shall make such materials available at their respective offices for inspection by the County at all reasonable times during the Agreement period, including before and after payment, and for six (6) years from the date of final payment under this Agreement.

10. APPROPRIATIONS AND AUTHORIZATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made for performance of this Agreement by the Board of County Commissioners or the Legislature of the State of New Mexico, if state funds are involved, for performance of this Agreement. If sufficient appropriations and authorizations are not made by the Santa Fe County Commission or the Legislature of the State of New Mexico, if state funds are involved, this Agreement shall terminate upon written notice by the County to the Contractor. Such termination shall be without penalty to the County, and the County shall have no duty to reimburse the Contractor for expenditures made in the performance of this Agreement. The County is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by the County. The County's decision as to whether sufficient appropriations and authorizations have been made for the fulfillment of this Agreement shall be final.

11. RELEASE

The Contractor, upon final payment due under this Agreement, releases the County, its Elected Officials, officers, agents and employees from all liabilities, claims, and obligations whatsoever arising from or under or relating to this Agreement. The Contractor agrees not to purport to bind the County to any obligation not agreed to herein unless the Contractor has express written authority from the County to do so, and then only within the strict limitations of that authority.

12. CONFLICT OF INTEREST

The Contractor warrants that he presently has no and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement.

13. NO ORAL MODIFICATIONS; WRITTEN AMENDMENTS REQUIRED

This Agreement may not be modified, altered, changed, or amended orally but, rather, only by an instrument in writing executed by the parties hereto. The Contractor specifically acknowledges and agrees that the County shall not be responsible for any changes to Section 1, "SCOPE OF WORK", of this Agreement unless such changes are set forth in a duly executed written amendment to this Agreement.

14. ENTIRE AGREEMENT; INTEGRATION

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such agreements, covenants and understandings have been merged into this written Agreement. No prior or contemporaneous agreement, covenant or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

15. EQUAL OPPORTUNITY COMPLIANCE

- A. The Contractor agrees to abide by all Federal, State, and local laws, ordinances, and rules and regulations pertaining to equal opportunity and unlawful discrimination. Without in any way limiting the foregoing general obligation, the Contractor specifically agrees not to discriminate against any person with regard to employment with the Contractor or participation in any program or activity offered pursuant to this Agreement on the grounds of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation, or gender identity.
- B. The Contractor acknowledges and agrees that failure to comply with this Section shall constitute a material breach of this Agreement.

16. SEVERABILITY

If any term or condition of this Agreement shall be held invalid or non-enforceable by any court of competent jurisdiction, the remainder of this Agreement shall not be affected and shall be valid and enforceable to the fullest extent of the law.

17. COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW

- A. In performing its obligations hereunder, the Contractor shall comply with all applicable laws, ordinances, and regulations.
- B. This Agreement shall be construed in accordance with the substantive laws of the State of New Mexico, without regard to its choice of law rules.
- C. The Agreement shall be governed exclusively by the laws of New Mexico as the same from time to time exist. Any litigation arising out of the Agreement shall be resolved in state and federal courts located in Santa Fe County, New Mexico.

18. NOTICE OF PENALTIES

The Procurement Code, NMSA 1978, Section 13-1-28 through 13-1-199, imposes civil and criminal penalties for its violation. In addition, New Mexico criminal statutes impose felony penalties for bribes, gratuities, and kickbacks.

19. NO THIRD-PARTY BENEFICIARIES

This Agreement was not intended to and does not create any rights in any persons not a party hereto.

20. FACSIMILE SIGNATURES

The parties hereto agree that a facsimile signature has the same force and effect as an original for all purposes.

21. NEW MEXICO TORT CLAIMS ACT

No provision of this Agreement modifies or waives any sovereign immunity or limitation of liability enjoyed by County or its "public employees" at common law or under the New Mexico Tort Claims Act, NMSA 1978, § 41-4-1, et seq.

22. INSURANCE

General Conditions. The Contractor shall submit evidence of insurance as is required herein.

Workers' Compensation Insurance. The Contractor shall comply with the provisions of the Workers' Compensation Act.

Professional Liability. The Contractor shall carry professional liability (errors and omissions) insurance, with policy limits of not less than \$1,000,000.00 and shall provide the County with proof of insurance coverage at the time of execution of this Agreement.

23. CAMPAIGN CONTRIBUTION DISCLOSURE FORM

The Contractor agrees to compute and submit simultaneous with execution of this Agreement a Campaign Contribution Disclosure Form approved by the County.

24. NOTICES

All notices required to be given to the County under this Agreement shall be mailed (pre-postage paid) to:

Santa Fe County
Office of the County Attorney
102 Grant Ave.
Santa Fe, NM 87504

All notices required to be given to the Contractor under this Agreement shall be mailed (pre-postage paid) to:

Marci A. Hamilton, Esq.
36 Timber Knoll Drive
Washington Crossing, PA 18977

25. SURVIVAL

The provisions of paragraphs 9, 10, 19, 21, 22 and 25 shall survive termination of this Contract.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

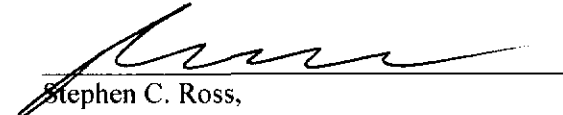
SANTA FE COUNTY



Roman Abeyta,
Santa Fe County Manager



APPROVED AS TO FORM:


Stephen C. Ross,
Santa Fe County Attorney

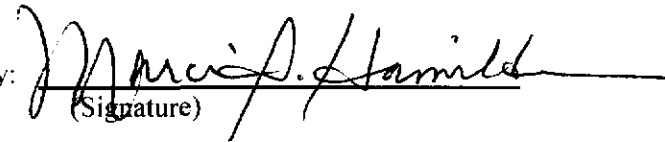
12-8-09
Date

FINANCE DEPARTMENT APPROVAL:


Teresa Martinez
Santa Fe County Finance Director

12/11/09
Date

MARCI A. HAMILTON, ESQ.:

By: 
(Signature)

12/3/09
Date

FEDERAL IDENTIFICATION NO.

462-78-1008

APPENDIX C

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to NMSA 1978, § 13-1-191.1 (2006), any person seeking to enter into a contract with any state agency or local public body for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

Furthermore, the state agency or local public body shall void an executed contract or cancel a solicitation or proposed award for a proposed contract if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

THIS FORM MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

"Applicable public official" means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

"Campaign Contribution" means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to either statewide or local office. "Campaign Contribution" includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a

candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

"Family member" means spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law.

"Pendency of the procurement process" means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

"Person" means any corporation, partnership, individual, joint venture, association or any other private legal entity.

"Prospective contractor" means a person who is subject to the competitive sealed proposal process set forth in the Procurement Code or is not required to submit a competitive sealed proposal because that person qualifies for a sole source or a small purchase contract.

"Representative of a prospective contractor" means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

DISCLOSURE OF CONTRIBUTIONS:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Name of Applicable Public Official: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s) _____

Nature of Contribution(s) _____

Purpose of Contribution(s) _____

(Attach extra pages if necessary)


Signature

Date

Title (position)

--OR--

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250) WERE MADE to an applicable public official by me, a family member or representative.


Signature

12/2/09
Date

MARCI A. HAMILTON